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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No._____

CITY OF VERO BEACH, a Municipal Corporation organized and existing under the Laws of the State of Florida,

Petitioner,

vs.

THE RITTENOURE INVESTMENT COMPANY, a Corporation organized and existing under the Laws of the State of Florida,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable the Supreme Court of the United States:

Petitioner, City of Vero Beach, a municipal corporation organized and existing under the laws of the State of Florida, respectfully petitions this Honorable Court that a writ of certiorari may be granted and directed to the United States Circuit Court of Appeals for the Tenth Circuit to certify to this Court for its review and determination the case of your Petitioner against The Rittenoure Investment Company, a corporation organized and existing under the laws of the State of Kansas.

Summary of Matter Involved

Action was instituted in the United States District Court for the District of Kansas, Second Division, by the filing of a petition, which petition was finally amended as the Third Amended Petition (R. 11), declaring for breach of contract against the defendant on account of its failure to perform a certain contract contemplating the refunding and refinancing of the outstanding bonded indebtedness of the City. The contract is attached to the original petition as Exhibit 2 (R. 8). Upon demurrer and motion to dismiss the said Third Amended Petition (R. 13, 14), an opinion was written by the District Judge (R. 15), and final judgment entered sustaining the motion to dismiss and the cause was dismissed with prejudice upon plaintiff electing to stand upon its pleadings (R. 18). From this final judgment, appeal was taken (R. 19) to the Circuit Court of Appeals of the Tenth Circuit, and there affirmed under date of June 27, 1940, rehearing denied August 9, 1940. The opinion is in the record filed in this Court (R. 25), and is reported in 113 F. (2) 269 (Adv. Sh.).

In its opinion, the Circuit Court of Appeals held that the basis of the District Court's decision was fallacious, but in view of the decision of the Supreme Court of Florida in *Taylor vs. Williams*, . . Fla. . . , 195 So. 175, the fiscal agency contract involved was void under applicable local law, lacked mutuality, and was therefore not the predicate for a suit by the promisee for damages on account of its breach.

Statement Disclosing Basis of Jurisdiction

The jurisdiction of this Court to review is predicated upon 28 U. S. C. 347, and upon Rule 38 (5) of the Supreme Court Rules, upon the ground that the Circuit Court of Appeals of the Tenth Circuit has rendered a decision in conflict with the

decisions of another Circuit Court of Appeals, to-wit, that of the Fifth Circuit, which embraces Florida, on the same matter; and has decided an important question of local law in a way probably in conflict with applicable local decisions.

The judgment and decision of the Circuit Court of Appeals (R. 25) is under date of June 27, 1940, rehearing denied August 9, 1940, reported in 113 F. (2) 269 (Adv. Sh.), and the date of the application for this writ of certiorari is September 18, 1940.

The Question Involved

The question presented is whether the Circuit Court of Appeals of the Tenth Circuit correctly applied the applicable local law of Florida in holding the fiscal agency contract void; and whether such holding is in conflict with decisions of the Circuit Court of Appeals of the Fifth Circuit.

Reasons Relied Upon For Allowance of the Writ

1. That the Circuit Court of Appeals decided an important question of local law in a way in conflict with applicable local decisions in its holding that the fiscal agency contract involved is void.

2. That the Circuit Court of Appeals of the Tenth Circuit has rendered a decision in conflict with the decisions of the Circuit Court of Appeals of the Fifth Circuit on the question of the validity of fiscal agency contracts of the nature involved.

3. That there is now pending in this Court upon writ of certiorari having been granted, the case of *American United Mutual Life Insurance Co. vs. City of Avon Park, Florida*, No. 31, October Term, 1940, in which is directly involved the question of the validity under Florida law of a fiscal agency

contract virtually identical with the one involved in the suit at bar; and if held valid under local law in the Avon Park case, the decision of the Circuit Court of Appeals of the Tenth Circuit in the suit at bar should be reversed; however, a failure to award a writ of certiorari will result in Petitioner being denied a right of review in such event.

WHEREFORE, your Petitioner respectfully prays that upon the granting of such writ of certiorari the judgment of the said Circuit Court of Appeals for the Tenth Circuit may be reversed, and your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and proper.

ROBERT J. PLEUS,
First National Bank Building,
Orlando, Florida.

CHARLES A. MITCHELL,
Vero Beach, Florida.
Attorneys for Petitioner.

AUSTIN M. COWAN,
Fourth National Bank Building,
Wichita, Kansas.
Of Counsel for Petitioner.